



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

December 1, 2008

Memorandum for: Chief of Personnel

**Subject: ADMINISTRATIVE TRANSFER, AND TRANSFER
RESTRICTION OF A UNIFORMED MEMBER OF THE
SERVICE**

1. Police Officer Vanessa Bobe-Ramirez, Tax # 924959, was recently the subject of Disciplinary Case No. 82317/06.
2. Separate and apart from the disciplinary process, the Police Commissioner also mandates that Officer Bobe-Ramirez be transferred to a Patrol Services Bureau Precinct enforcement command located *within* the confines of Patrol Borough Manhattan South. Further, **Officer Bobe-Ramirez will not be the subject of any future transfer without the explicit approval of the Police Commissioner.**
3. Forwarded for necessary attention.

BY DIRECTION OF THE POLICE COMMISSIONER

Raymond Spinella
Deputy Chief
Commanding Officer
Police Commissioner's Office



POLICE DEPARTMENT

June 30, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Vanessa Bobe-Ramirez
Tax Registry No. 924959
48 Precinct
Disciplinary Case Nos. 82317/06 & 81941/06

The above-named members of the Department appeared before me on February 5 and March 13, 2008, charged with the following:

Disciplinary Case No. 82317/06

1. Said Police Officer Bobe-Ramirez, while on duty at [REDACTED] Hospital, while assigned to the 48 Precinct, on or about June 6, 2006, did fail and neglect to properly secure a hospitalized prisoner, to wit: said officer failed to handcuff a hospitalized prisoner as required.

P.G. 210-02, Page 5, Additional Data-Security Procedures – HOSPITALIZED PRISONERS

2. Said Police Officer Bobe-Ramirez, on the date, time, location, and while assigned as indicated in Specification No. 1, while on duty, while assigned to a tour of duty at a post known to the Department was absent from said assignment without permission or police necessity, to wit: said police officer was observed off post during her tour of duty.

P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY – GENERAL REGULATIONS

3. Said Police Officer Bobe-Ramirez, on the date, time, location, and while assigned as indicated in Specification No. 1, was discourteous to New York City Police Department Sergeant Andrew Brown, in that when she was observed off post as indicated in Specification No. 2, she was observed and heard speaking with another UMOS known to the Department, and in a loud voice stated in sum and substance: that mother fucker, he already has a problem with me, why is he bothering me, he's the one that got me suspended; referring to said sergeant.

P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT –
GENERAL REGULATIONS

4. Said Police Officer Bobe-Ramirez, on the date, time, location, and while assigned as indicated in Specification No. 1, did fail and neglect to maintain said officer's Activity Log (PD 112-145), as required, to wit: said officer failed to document if she conducted a security inspection of a hospitalized prisoner, as required.

P.G. 212-08, Pages 1-2 – COMMAND OPERATIONS

5. Said Police Officer Bobe-Ramirez, while on duty at [REDACTED] Hospital, while assigned to the 48 Precinct, on or about June 8, 2006, while assigned to a tour of duty at a post known to the Department was absent from said assignment without permission or police necessity, to wit: said police officer was observed off post during her tour of duty.

P.G. 203-05, Page 1, Paragraph 2 – PERFORMANCE ON DUTY –
GENERAL REGULATIONS

Disciplinary Case No. 81941/06

1. Said Police Officer Vanessa Bobe-Ramirez, assigned to the 48 Precinct, while on duty, on or about May 7, 2006, at a location known to this Department, in Bronx County, did wrongfully engage in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: said police officer failed to safeguard a prisoner known to this Department, resulting in the loss of said prisoner. (As amended)

P.G. 203-10, Page 1, Paragraph 5 – PROHIBITED CONDUCT

The Department was represented by Michelle Blackman, Esq., Department Advocate's Office, and the Respondent was represented by Eric Sanders, Esq.

The Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 82317/06

The Respondent is found Guilty of Specification Nos. 1, 2, 3, and 5. She is found Not Guilty of Specification No. 4.

Disciplinary Case No. 81941/06

The Respondent is found Guilty as charged.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Sergeant Andre Brown, Police Officer Orlando Martinez, Sergeant Ermyne Fleming, and Captain Frank Klimoski as witnesses.

Sergeant Andre Brown

Brown, an eight-year member of the Department, is currently assigned to the 48 Precinct. He testified that on June 6, 2006, he was assigned as the day tour patrol supervisor. At approximately 10:30 a.m. that day, he went to visit the Respondent, a Police Officer Jadicine Bess, and a Police Officer Orlando Martinez at their posts. Brown had assigned the three officers that day to safeguard prisoners at [REDACTED] Hospital. Brown testified that upon his arrival at the hospital he first went to Bess' post, room 730. Brown found Bess on post. Brown proceeded to inspect the post, check the prisoner that Bess was safeguarding, and determine from looking at Bess' Activity Log that Bess had conducted a security inspection of the post. Brown explained that a police officer is always supposed to conduct an inspection upon arrival at post. He further

explained that for an officer assigned to a hospital post, inspection should include securing the windows and ensuring that no contraband, possible escape aids, or dangerous instruments are accessible to the prisoner. An officer is supposed to document a security inspection in his Activity Log. Brown determined that both Bess and her prisoner were in compliance with Department procedure.

After leaving Bess' post, Brown went to the hospital's sixth floor, where both Martinez and the Respondent were assigned. Martinez was assigned to safeguard a prisoner in room 625, and the Respondent was assigned to safeguard a prisoner in room 632. According to Brown, rooms 625 and 632 are approximately ten to 15 feet away from each other and on opposite sides of the hall. When Brown arrived on the sixth floor, he observed Martinez and the Respondent sitting in chairs outside of room 625 apparently engaged in conversation. Martinez and the Respondent acknowledged Brown when they saw him. Brown noted at the time that the Respondent was off post, but he did not say anything to her about the matter.

Brown proceeded to enter room 625 with Martinez, inspect the post, check that the prisoner in the room was leg shackled and handcuffed, and determine from looking at Martinez's Activity Log that Martinez had conducted a security inspection of the post. At one point while Brown was inside room 625, the Respondent entered the room and then left. Brown determined that both Martinez and his prisoner were in compliance with Department procedure.

When Brown exited room 625, he observed the Respondent in the hallway halfway between rooms 625 and 632. Brown stated that this location was still off post for the Respondent. He explained that ideally a police officer assigned to safeguard a

hospitalized prisoner would remain inside the hospital room and maintain constant visual contact with the prisoner. It is acceptable, though, for an officer to step immediately outside of the hospital room, but the officer should still be able to maintain visual and audible contact with the prisoner. When Brown entered room 632, he observed that one of the prisoner's legs was shackled to the bed but the other leg was unrestrained. Brown testified that this was all right since the prisoner was engaged in a medical treatment that made the shackling of the second leg impractical. He explained that restraint is not required in situations where medical treatment precludes it.

Brown also observed that the Respondent's prisoner was not handcuffed. According to Brown, the prisoner's left arm had bandage from the forearm to the elbow, but there was nothing on the wrist area. There was no bandage or casting at all on the prisoner's right arm. Brown testified that removing handcuffs from a prisoner is acceptable when the prisoner needs to go to the bathroom. Similarly, it is all right to remove one hand from a handcuff in order to allow a prisoner to eat. Even then, though, one hand should remain handcuffed to the bed. If a handcuff is removed from a prisoner for some reason, the safeguarding police officer should remain in the room. While Brown was in room 632 that day, the prisoner was not eating or utilizing the bathroom facilities. Brown concluded that there was no reason for the prisoner not to be handcuffed and that, therefore, the Respondent should have placed handcuffs on the prisoner. He explained that even if the Respondent wanted to avoid placing handcuffs on the prisoner's bandaged left arm, she still could have handcuffed the prisoner's right hand to the bed. According to Brown, when he asked the Respondent why her prisoner was not handcuffed, she pointed out that the prisoner's leg shackles were on. Brown found

this to be an insufficient response. The fact that an alternative form of mechanical restraint was in use did not explain why the Respondent did not handcuff the prisoner. According to Brown, when he asked the Respondent a second time why her prisoner was not handcuffed, she replied, "I said he has leg shackles on." At that point, Brown ordered the Respondent to handcuff the prisoner. According to Brown, the Respondent responded to the order by stating, "Why are you bothering me? No one else ever asked me about this. It's just you." Brown stated that when he ordered the Respondent again to handcuff the prisoner, the prisoner asked, "What's your problem?" Brown testified that when he ordered the Respondent a third time to handcuff the prisoner, the Respondent replied, "Whatever, whatever," and proceeded to handcuff the prisoner as she told the prisoner not to worry and that everything was going to be alright. The Respondent then exited the room, and Brown followed. Brown testified that he spent a total of approximately three minutes in room 632. He explained that he did not handcuff the prisoner himself because that was not his responsibility.

Upon exiting the room, Brown looked at the Respondent's Activity Log. According to Brown, the Respondent did not indicate in her log whether or not she had conducted a security inspection of her post. As Brown was preparing to document his visit to the Respondent's post in his own Activity Log, he observed the Respondent speaking with Martinez approximately ten feet from room 632. According to Brown, he heard the Respondent refer to him as a "motherfucker." Brown testified that when he asked the Respondent if she was calling him a motherfucker, the Respondent replied that he was bothering her and that she already had a problem with him as he was the one who got her suspended. At that point, Brown received a telephone call from his platoon

commander. After concluding the call, Brown instructed the Respondent to return to post. According to Brown, the Respondent responded in a condescending manner, "I was waiting for you to finish your phone call." Brown stated that he did not take any immediate disciplinary action against the Respondent because he wanted to confer with his platoon commander. Immediately after his exchange with the Respondent, Brown documented the incident in his own Activity Log from June 6, 2006. The entry starts on the lined side of the Activity Log page and continues onto the blank back side of the previous page. It reads:

Visited Respondent. . . . Prisoner not handcuffed. Instructed to handcuff prisoner and maintain restraints. Instructed to perform a security check of post. Respondent disrespectful. Respondent responded to this supervisor, 'Whatever, he has shackles, yeah, yeah, whatever' when instructed to handcuff her prisoner. Officer not on post. Officer situated at room opposite room 625. Her prisoner was in room 632. Officer referred to this supervisor as a "motherfucker" and then stated, 'Listen, I already have a problem with you anyway. Now you are bothering me. I gonna make a complaint. You got me suspended.' Police Officer Martinez witness to above accounts. (DX 1)

On cross-examination, Brown clarified that handcuffing is not necessary in situations where it would be medically inappropriate, but the term "medically inappropriate" does not appear in the hospitalized prisoner section of the Patrol Guide. Brown testified that a police officer safeguarding a hospitalized prisoner is supposed to have the arrest paperwork for the prisoner. The arrest paperwork, according to Brown, might indicate whether or not the prisoner is considered a flight risk. Brown did not recall if he checked to see if the Respondent had the arrest paperwork for her prisoner. Like the arrest paperwork, a Prisoner Movement Slip might also indicate whether or not a prisoner is considered a flight risk. Brown stated that he did not recall if the Respondent

had a Prisoner Movement Slip for her prisoner. He further stated, however, that a Prisoner Movement Slip would not have been generated anyway until the prisoner was transported to Central Booking.¹ Brown testified that an officer safeguarding a hospitalized prisoner is supposed to have a Prisoner Treatment Form for the prisoner, but he did not recall if the Respondent had one.

Brown testified that he did not recall how far up the prisoner's left arm the bandage went. He stated that had the prisoner had a cast on his left hand that rendered his hand immobile, it would have been inappropriate to place a handcuff on the prisoner's left wrist. Brown did not recall seeing any milk or food near the prisoner.

Brown reiterated that he visited Bess' post before visiting the Respondent's. According to Brown, Bess told him that she had conducted a security check of her post. Brown subsequently inspected Bess' Activity Log. Bess indicated in the log which police officer she relieved at room 730. She also indicated in the log that, upon her arrival on post, she conducted a security check with negative results. In addition, Bess noted in the log that her prisoner was handcuffed. Brown stated that he found Bess' Activity Log entry acceptable. [Respondent's Exhibit (RX) A is a copy of Bess's Activity Log for the day.]

Brown reiterated that when he went to the hospital's sixth floor, he observed Martinez and the Respondent sitting in chairs outside of room 625. He further reiterated that it is acceptable for an officer safeguarding a prisoner to be in the area immediately

¹ The Respondent's attorney asked the Court to take judicial notice of Patrol Guide section 210-02 because it allegedly dictates that desk officers and patrol supervisors are responsible for Prisoner Movement Slips. Upon review of this procedure, the Court could not find any such provision. The Court notes, however, that Patrol Guide section 208-15 does provide that an arresting officer, with the assistance of the arrest processing officer, should have a Prisoner Movement Slip prepared for his prisoner before transport to Central Booking.

outside of the hospital room. He conceded that it may not always be possible for a safeguarding officer to maintain visual contact with the prisoner. According to Brown, Martinez told him that day that he had conducted a security check of his post. Brown subsequently inspected Martinez's Activity Log. Martinez indicated in the log that, upon his arrival at post, he checked the windows, walls, ceiling, and bathroom with negative results. Martinez did not mention in the log whether his prisoner was handcuffed, leg shackled, or anything else about the prisoner's condition. Brown testified that he found Martinez's Activity Log entry regarding the security inspection acceptable. He explained that while a safeguarding officer is required to document a security inspection of his post, the officer is not required to specifically document the prisoner's condition or whether or not the prisoner is handcuffed. (RX B is a copy of Martinez's Activity Log)

Brown testified that he inspected the Respondent's Activity Log that day and did not see anything about a security inspection of the post. The Respondent did indicate in the log that her prisoner had leg shackles. She also indicated in the log which officer she relieved at room 632. Brown testified that he did not know if the Respondent had a conversation with the officer she relieved. According to Brown, the Respondent should have documented in her log her inspection of the post, meaning the hospital room. (RX C is a copy of the Respondent's Activity Log)

Brown testified that he concluded documenting his encounter with the Respondent on the back of his Activity Log page, not the lined side of the page, because there was a lot of information to take down. According to Brown, when the Respondent called him a motherfucker, he was standing directly outside of room 625, and the Respondent was standing with Martinez approximately ten to 15 feet away.

Police Officer Orlando Martinez

Martinez, a five-and-a-half-year member of the Department, is currently assigned to Patrol Borough Bronx. He testified that on June 6, 2006, he was assigned to safeguard a hospitalized prisoner in room 625 of [REDACTED] Hospital. The Respondent was assigned the same day to safeguard another prisoner, who was located two or three rooms down the hall from room 625. Martinez and the Respondent arrived at the hospital at approximately 7:30 a.m. Upon arriving at his post, Martinez conducted a security inspection of the room. Martinez documented the inspection in his Activity Log. Martinez stated that during the course of the day he and the Respondent talked to each other "on and off" in the hallway. According to Martinez, he would stay by room 625 and look into the room while they spoke, and the Respondent would come to his location. Martinez testified that the Respondent was, therefore, approximately ten or 15 feet away from her post at times.

Martinez testified that the Respondent was in the hallway talking to him when Brown arrived at approximately 10:30 a.m. Martinez stated, however, that he was not certain whether or not the Respondent was on her post at that particular moment. He explained that the Respondent may have been standing next to him or may have been farther down the hall. Brown entered room 625 and checked Martinez's prisoner. The prisoner was handcuffed and at least one leg was shackled. Martinez could not recall if both of his prisoner's legs were shackled. After inspecting and signing Martinez's Activity Log, Brown exited the room. Martinez testified that at that point the Respondent was in the hallway, but Martinez could not recall if the Respondent was standing by room 625 or down the hall closer to her own post. Brown and the Respondent entered the room

where the Respondent's prisoner was located. From his location, Martinez was able to hear a male voice and female voice shouting. The Respondent then left the room and walked away from post in Martinez's direction. Brown followed the Respondent. According to Martinez, he heard Brown tell the Respondent "Come and stand by the door to your prisoner," and, "Grab your stuff and stand by your prisoner's room." Martinez stated that at that point he left the hallway and went into his prisoner's room. He testified that he heard the Respondent and Brown arguing in the hallway, but he could not hear the content of the argument. When Brown left, Martinez went back outside to the hallway, where he observed the Respondent gathering her stuff and situating herself in front of her prisoner's door. Martinez testified that when he asked the Respondent what had happened, the Respondent replied that Brown was upset because her prisoner was not handcuffed. The Respondent also told Martinez that Brown accused her of calling him (Brown) "a black motherfucker."

On cross-examination, Martinez testified that while the Respondent and Brown argued in the hallway, he was present in the hallway for five to ten seconds before he went into his prisoner's room. He stated that he never heard the Respondent call Brown a motherfucker. Martinez stated that he is frequently assigned to safeguard hospitalized prisoners and normal procedure for an officer safeguarding a prisoner is to call for relief when he (the officer) needs to go to the bathroom. Martinez reiterated that he heard a male voice and a female voice shouting in the room where the Respondent's prisoner was located. Martinez did not know, however, who it was that was shouting. Similarly, he did not know how many people were in that room or if the Respondent's prisoner was male or female. According to Martinez, an officer assigned to safeguard a prisoner is

supposed to have paperwork on the prisoner, including the prisoner's arrest report. Based on this paperwork, the officer would be able to tell if his prisoner was violent or aggressive. Martinez testified that handcuffs are taken off of a hospitalized prisoner when the prisoner is getting x-rayed or needs to go to the bathroom or whenever a supervisor orders that the handcuffs to be removed. He stated that as a police officer he has to make judgments based on the surroundings he has in front of him.

Sergeant Ermyne Fleming

Fleming, a 14-year member of the Department, is currently assigned to the 48 Precinct. She testified that on June 8, 2006, while assigned as the patrol supervisor, she went to visit the Respondent and Bess at their posts. Fleming had assigned the two officers that day to safeguard prisoners at [REDACTED] Hospital. Fleming testified that upon her arrival at the hospital, she observed the Respondent and Bess having a conversation in Bess' prisoner's room. The Respondent, who was assigned to safeguard another prisoner one room down the hall, was, therefore, off post at the time. Fleming stated that when the Respondent saw her approach, the Respondent starting walking toward her post. When Fleming asked the Respondent why she was not on post, the Respondent replied that she needed to take a personal in order to use the bathroom. Fleming testified that she makes Activity Log entries immediately after an incident occurs. [DX 2 is a copy of Fleming's Activity Log for June 8, 2006. It states, "Instructed Respondent on prisoner security. (I observed her away from room 632 and prisoner unattended.)"]

Fleming testified that she entered the Respondent's prisoner's room and made sure everything was in order. Fleming explained that hospitalized prisoners usually have one hand handcuffed to the bed. Violent prisoners should also be leg shackled. Fleming stated that she is not aware of any times that a hospitalized prisoner should not be handcuffed, and even when a prisoner is eating one hand should remain handcuffed to the bed. Fleming went on to state, however, that the type of restraint used can vary by situation, based on the Patrol Guide and common sense. Fleming explained that if a prisoner has a broken arm, the prisoner's unbroken arm can be handcuffed. If a prisoner has two broken arms, the prisoner can be leg-shackled instead of handcuffed. In these cases, though, the guarding officer must keep a particularly close watch on the prisoner.

On cross-examination, Fleming testified that there was a bathroom inside room 632. She stated that when she asked the Respondent which bathroom she used, the Respondent pointed to another bathroom down the hall. She further stated that although a police officer should maintain visual contact with his prisoner at all times, there may be moments that direct visual contact does not occur. For example, if the Respondent had used the bathroom in 632, she would not have been able to see the prisoner while the bathroom door was closed. Fleming testified that officers assigned to safeguard hospitalized prisoners can go to the bathroom so long as someone else covers their post. Fleming did not ask the Respondent if Bess was covering room 632 while she (the Respondent) was in the bathroom. Fleming explained that had Bess covered room 632, there would have been no way for Bess to keep an eye on her own prisoner. Fleming conceded that an officer assigned to safeguard a hospitalized prisoner is "more or less" left to his own judgment on how to handle his post. The officer must use common sense

to adjust to certain situations. For example, a violent prisoner should never have his handcuffs removed. There are other situations, however, in which leg shackles can be used instead of handcuffs.

On redirect examination, Fleming testified that had Bess gone to room 632 to watch the Respondent's prisoner, Bess would have been off post and Bess' prisoner would have been unwatched. It would, therefore, have been unfeasible for Bess to watch both her own prisoner and the Respondent's prisoner while the Respondent went to the bathroom. It is not procedure for one officer to watch two hospitalized prisoners at the same time. According to Fleming, when an officer safeguarding a prisoner needs to use the bathroom, the officer is supposed to call the desk officer over the radio and request that relief be sent.

Captain Frank Klimoski

Klimoski, a 35-year member of the Department, is currently assigned to the Property Clerk Division. He testified that while assigned as the Bronx Duty Captain on May 7, 2006, he was summoned to Bronx Central Booking because a prisoner, [REDACTED], was missing. Klimoski later learned that a Police Officer Ingoglio and the Respondent had been assigned that day to transport [REDACTED] and other prisoners from the 48 Precinct station house to Central Booking. Ingoglio and the Respondent did not ride to Central Booking in the prisoner van, but instead followed the prisoner van in a Radio Motor Patrol vehicle (RMP). Upon their arrival at Central Booking, Ingoglio led a line of 16 prisoners into the building while the Respondent followed at the rear of the line. Each of the prisoners was handcuffed and attached to a daisy chain, but Klimoski could not recall whether or not the prisoners were all attached to the same daisy chain.

As the prisoners entered Central Booking, the Respondent followed approximately two feet behind the last prisoner. Before entering the building, [REDACTED] walked away. Klimoski stated that when he asked the Respondent how [REDACTED] was able to just walk off, the Respondent could not give a response. Klimoski testified that his investigation into the incident resulted in a determination that [REDACTED] escaped because the Respondent failed to properly safeguard him. Consequently, the Respondent was suspended.

Klimoski learned in his investigation that [REDACTED] was able to slip his hands in and out of his handcuffs while he was in the prisoner van between the 48 Precinct and Central Booking. As a result, the 48 Precinct cell attendant received a Command Discipline for failing to properly handcuff [REDACTED] to the daisy chain. The 48 Precinct desk officer for that day also received a Command Discipline for neglecting to physically inspect the handcuffs of each prisoner on the daisy chain. Ingoglio received a Command Discipline for riding to Central Booking in an RMP instead of the prisoner van. Klimoski explained that while these other members of the service committed errors, the Respondent was the only member of the service to be suspended because her error was the most serious. He further explained that while the prisoners walked from the prisoner van to Central Booking, the Respondent alone was responsible for safeguarding them. According to Klimoski, while Ingoglio was at the front of the line and preoccupied with opening the door to the building, the Respondent was in the best position to observe the prisoners. [DX 3 is a copy of the Central Booking surveillance tape on which the incident was captured. In the video, [REDACTED] can be seen nonchalantly walking down the street with his hand in his pocket.]

On cross-examination, Klimoski reiterated that it was a series of errors that led to [REDACTED]'s escape. He testified that [REDACTED] and the other prisoners being transported had actually been in Central Booking earlier. He explained that because Central Booking was very crowded, [REDACTED] and the other prisoners were taken to the 48 Precinct station house for lodging. Klimoski did not think the 48 Precinct was supplied with Prisoner Movement Slips for the prisoners. He testified that in his personal experience with transporting prisoners, he was always supplied with Prisoner Movement Slips. He explained that officers are given Prisoner Movement Slips so that they can identify the prisoners they are transporting. A Prisoner Movement Slip contains a prisoner's photograph and pedigree information. In addition, a Prisoner Movement Slip provides information such as why a specific prisoner is in custody and if a prisoner is a flight risk. Because officers do not know the prisoners that they are transporting, they must rely on Prisoner Movement Slips for information about the prisoners. Klimoski testified that without a Prisoner Movement Slip, there would be no way for a transporting officer to know that an uncuffed individual leisurely walking away with his hands in his pockets was in fact in police custody. Klimoski went on to testify, however, that the Respondent should have identified [REDACTED] as a prisoner because [REDACTED] came out of the prisoner van and the Respondent was supposed to be observing all of the prisoners as they walked from the van to Central Booking. [RX D is a copy of [REDACTED]'s Prisoner Movement Slip.]

The day after the incident, Klimoski prepared a memorandum about the incident for the First Deputy Commissioner. In the memorandum, Klimoski addressed the issue of Prisoner Movement Slips. Klimoski testified that he addressed the issue because "it

reflected some administrative discrepancies about Movement Slips.” He explained that it would be beneficial for transporting officers to have Prisoner Movement Slips so that they could identify the prisoners and know who they were dealing with. [RX E is a copy of the memorandum that Klimoski prepared for the First Deputy Commissioner on May 8, 2006. On the subject of Prisoner Movement Slips, Klimoski wrote:

Currently, Prisoner Movement Slips are retained at the Bronx Court Section when prisoners are lodged in precincts while awaiting arraignment; recommended Movement Slips be carried by wagon operators when transporting prisoners, thereby ensuring members of the service can identify prisoners being transported and account for them in a timely fashion.]

Klimoski could not recall if [REDACTED] was one of 16 or 17 prisoners being transported to Central Booking. According to Klimoski, police officers assigned to transport prisoners are supposed to keep their prisoners under constant observation. He stated that it is common for officers transporting prisoners to ride in an RMP directly behind the prisoner van.

The Respondent's Case

The Respondent testified in her own behalf.

Respondent Police Officer Vanessa Bobe-Ramirez

The Respondent, an eight-year member of the Department, is currently assigned to the 48 Precinct. She testified that when assigned to safeguard a hospitalized prisoner, she is supposed to ensure that the prisoner is handcuffed and secured. She is also supposed to check the hospital room and maintain visual contact with the prisoner. On

June 6, 2006, the Respondent was assigned to safeguard a prisoner at [REDACTED] Hospital. She testified that she relieved a Police Officer Rabassa at the hospital. She stated that Rabassa removed his handcuffs from the prisoner, and she replaced the handcuffs with her own. Rabassa also informed the Respondent that the prisoner's legs were shackled. According to the Respondent, Rabassa did not tell her anything else about the prisoner. Because the Respondent had just returned to work from a period of suspension, she did not know how long the prisoner had been in the hospital. The Respondent stated that she did not have a Prisoner Movement Slip, Arrest Report, or any other paperwork to identify why the prisoner was in police custody. The only paperwork she had on the prisoner was a Medical Treatment Form.

The Respondent testified that the prisoner she was safeguarding that day had casts on both legs from the tops of his thighs to his toes. The prisoner also had a cast on his left arm from his shoulder to his fingertips. The prisoner did not have any injury to his right arm, and his right hand was handcuffed to the bed. Instead of sitting in the hospital room with the prisoner, the Respondent sat in a chair out in the hallway. The chair was opposite the room door, and the Respondent sat facing the prisoner's room. According to the Respondent, she had a better view of the prisoner from that location, and Department policy does not prohibit an officer from sitting in the hallway. The Respondent explained that she does not like to sit in the room with hospitalized prisoners because they sometimes have airborne diseases. She further explained that by situating herself in the hallway, she is able to see if anybody suspicious is approaching the prisoner's room.

The Respondent testified that Martinez was safeguarding another prisoner that day in the neighboring hospital room. The door of her prisoner's room was

approximately 15 to 20 feet from the door of Martinez's prisoner's room. Like the Respondent, Martinez sat in a chair in the hallway. The Respondent and Martinez engaged in conversation. At one point, Brown arrived at the hospital. The Respondent testified that Brown's visit must have taken place early in the tour because her prisoner was still eating breakfast. According to the Respondent, her prisoner was not handcuffed at the time because he needed to use his right hand to eat. She explained that the prisoner could not use his left hand, and uncuffing the prisoner so that he could eat was consistent with Department policy. The prisoner's legs were still shackled. The Respondent testified that Brown walked into her prisoner's room and she followed after him. She stated that when Brown asked her why the prisoner was not handcuffed, she explained to Brown that the prisoner was eating. Even though the Respondent indicated to Brown that the prisoner had leg shackles on, Brown told the Respondent that he wanted the prisoner to be handcuffed. Brown did not tell the Respondent why the prisoner should be handcuffed while eating. The Respondent testified that she and Brown "proceeded to have a little dispute" because the prisoner was not done eating and she did not want to handcuff the prisoner. She further testified, however, that she handcuffed the prisoner as soon as Brown ordered her to do so. According to the Respondent, her exchange with Brown was loud. At one point, the prisoner told Brown that he never had a problem with any other member of the service, and the prisoner asked Brown how he was supposed to finish eating with handcuffs on. The Respondent stated that the prisoner seemed upset and spoke to Brown loudly enough to be heard by a person in the hallway walking past the room. According to the Respondent, the prisoner posed a potential risk to her because he was upset. Brown spent a total of approximately five minutes in the hospital

room. The Respondent testified that when Brown left the room, he told her to move her chair across the hallway. At that point, the Respondent told Brown, "I don't know why you keep picking on me. You are the reason I got suspended, and I want to be left alone." Brown then inspected the Respondent's Activity Log without comment, walked down the hallway, made a telephone call, and exited the hospital. The Respondent stated that at no point during the incident did she call Brown a motherfucker. At approximately 4:30 p.m., the Respondent was relieved at the hospital, and she returned to the station house to sign out. While in the station house, the Respondent did not see Brown or the desk officer. Nobody spoke to her that day about violating Department policy with respect to the prisoner.

The Respondent testified that on June 8, 2006, Fleming assigned her to safeguard the same hospitalized prisoner that she had guarded two days earlier. The prisoner still had casts on both of his legs and his left arm. Once again, she and the officer she was relieving exchanged handcuffs. Bess was assigned that day to safeguard the prisoner in the neighboring room. At approximately 12:00 p.m., Fleming arrived at the hospital. At the time, the Respondent was walking back from the bathroom. The Respondent explained that she used the hospital employee bathroom, which was located in the hallway three or four doors down from her prisoner's room. She further explained that she did not use the bathroom inside her prisoner's room because the bed was blocking the bathroom door. According to the Respondent, officers assigned to safeguard prisoners in [REDACTED] regularly use the employee bathroom in the hallway, and they take turns watching each other's prisoners. The Respondent stated that she does not know of any Department policy that prohibits officers from using the employee bathroom in the

hallway. When Fleming entered the Respondent's prisoner's room, she asked the Respondent where she had been. The Respondent informed Fleming that she had just gone out to the bathroom. Fleming did not tell the Respondent anything at that point about violating Department policy. The Respondent did not know that Fleming believed her to be off post until the day she received charges.

The Respondent testified that on May 7, 2006, she and Ingoglio were partners in a sector car. At approximately 1:00 p.m. that day, Brown (who was desk officer) summoned the Respondent and Ingoglio back to the station house and reassigned them to transport prisoners to Central Booking. The Respondent stated that when she arrived at the station house, the prisoners were already in the prisoner van. She did not know how many prisoners were in the transport, and Brown did not give her any paperwork to take to Central Booking. The Respondent testified that she went into the station house to quickly use the bathroom. According to the Respondent, she had intended on riding to Central Booking in the prisoner van, but the van had started to pull away by the time she returned to the parking lot. She, therefore, rode with Ingoglio in an RMP behind the prisoner van. Upon their arrival at Central Booking, the Respondent and Ingoglio escorted the prisoners into the building. They were then notified to return to the station house for a second prisoner transport.

When the Respondent returned to the station house, a Sergeant O'Rourke was at the desk. While Ingoglio and an Officer Torres placed prisoners on the daisy chain, the Respondent was instructed to retrieve one last prisoner from the holding cells. The Respondent testified that she did not know at the time how many prisoners were in this second transport to Central Booking. While she was in the holding cells, though,

somebody may have informed Ingoglio of the number of prisoners. Only after charges were brought against her did the Respondent learn that there were 17 prisoners in the transport. The Respondent and Ingoglio were not given Prisoner Movement Slips. The Respondent stated that Ingoglio and Torres escorted the prisoners on the daisy chain from the station house to the prisoner van. According to the Respondent, the only prisoner that she escorted to the van was the prisoner that she had retrieved from the holding cells.

The Respondent testified that an Officer Rivera drove the prisoner van from the station house to Central Booking. The Respondent and Ingoglio once again followed the prisoner van in their RMP. The Respondent explained that she likes to follow prisoner vans in an RMP because it gives her a better view in the event of an escape. She further explained that prisoner vans are equipped with a cage that separates the driver's area from the prisoners' area. An officer who accompanies a driver inside the van can stand in the front of the van next to the driver but cannot see the activities of the prisoners in the back of the van.

The Respondent testified that prisoners enter Central Booking through a door that is located on a public sidewalk. There are cement barriers that lead to the door. The barriers are in place to prevent pedestrians from walking through the area while prisoners are being escorted into the building. There is, however, a gap of four or five feet between the end of the barriers and the wall of the building. According to the Respondent, people walk up and down the block, including around the barriers, all the time. In addition, the Respondent stated that corrections officers and court personnel enter and exit the building through the same door that the prisoners use. She explained that it is at times not possible to differentiate between who is coming and who is going.

Upon review of the video, the Respondent testified that the 17 prisoners in the transport were divided between two daisy chains with four prisoners on one chain and 13 on the other. The first prisoners to get off of the van were the ones on the four-person chain. While Ingoglio entered Central Booking with those four prisoners, the Respondent was still outside with the rest. The 13 prisoners were not in a straight line, but were bunched up in a group. The Respondent stated that she looked around to ensure nobody suspicious approached. On the video, both [REDACTED] and a woman can be seen walking by. The woman was just a pedestrian walking down the block. The Respondent did not have a Prisoner Movement Slip for [REDACTED] and did not know at the time that he was an escaping prisoner. The Respondent testified that no supervisors spoke with her that day about a prisoner escaping. The next day, she was the subject of an Official Department Interview. In the interview, the Respondent told the investigators about the previous day's prisoner transports. The investigators did not ask her anything about an escaped prisoner. Immediately after the interview, the Respondent was suspended from duty. The Respondent was not informed at the time why she was being suspended. The Respondent did not know the reason for her suspension until she received charges for the incident.

It came out on cross-examination, that in a June 14, 2006 Official Department Interview, the Respondent stated that she sat with her back toward her prisoner on June 6, 2006. She further stated in the interview that she checked the room but did not maintain a constant visual on the prisoner. The Respondent reiterated at trial, however, that she did, in fact, sit facing the prisoner that day. According to the Respondent, it was

Brown's instruction to move her chair across the hall that would have placed her in a position where she was facing away from the prisoner.

In her Official Department Interview, the Respondent stated that Brown instructed her to move her chair "back in front of the room." The Respondent reiterated at trial, however, that the chair was, in fact, right near the room door. According to the Respondent, both she and Martinez were on post, and they were talking to each other from a distance of ten to 15 feet. She stated that when Brown arrived at her post, she was talking to Martinez and sitting on the chair in the hallway right in front of her prisoner's room with a visual of the prisoner. She reiterated that the prisoner was leg shackled but was not handcuffed at the time so that he could eat breakfast. She went on to clarify that the prisoner was not, in fact, eating breakfast but was rather drinking orange juice. In either case, according to the Respondent, the prisoner needed to use his hand. The Respondent conceded that the prisoner could have taken the opportunity to attempt escape. The Respondent reiterated that the prisoner and Brown had an exchange with each other. She explained that she did not mention this exchange in her Official Department Interview because she was not asked about it. According to the Respondent, she was upset with Brown for "trying to belittle [her] in front of the prisoner." She stated that she believed that Brown had something to do with her recent suspension, and she was "not too fond" of him that day. She further stated, however, "I don't have any problems [with Brown]. He is my boss, and that's how I deal with it."

The Respondent testified that when she entered the hospital room that day for the first time, she checked the area immediately surrounding the prisoner's bed. She explained that she did not check the window because her prisoner was not near the

window. Another patient was near the window, and the Respondent did not want to disturb the other patient. The Respondent stated that she was never told that she needed to check the windows, and she did not know if that was something she was supposed to do.

The Respondent reiterated that on June 8, 2006, she left post to go to the bathroom. She asked Bess to check on her prisoner while she was in the bathroom. She conceded that for safety and security reasons, an officer is assigned only one prisoner to safeguard. She also conceded that because Bess had her own prisoner to safeguard in another room ten to 15 feet away, there were times that her prisoner was alone unattended. The Respondent stated that she watched Bess's prisoner while Bess used the bathroom.

The Respondent reiterated that she knew neither the identities nor the number of prisoners that she transported to Central Booking on May 7, 2006. She testified that in her six years of service this was the way it had always been, and she did not ask anybody that day how many prisoners were in the transport. At the time, Central Booking kept Prisoner Movement Slips. The procedure has since changed. The Respondent stated that police officers must be keen on their observation of prisoners because observation is the only way to keep track of them. She reiterated that while the prisoners walked into Central Booking, she was looking around. She conceded that, therefore, her eyes were not on the prisoners the entire time. She explained that because it was an open area, she looked around to ensure that nobody dangerous approached her from behind. The Respondent testified that she believed [REDACTED] could have been just a pedestrian walking by. Upon watching the videotape of the incident, however, the Respondent

agreed that no pedestrians passed by the immediate vicinity of the Central Booking doorway as the prisoners were entering the building. She stated that while [REDACTED] escaped, she was not looking specifically at [REDACTED] but was instead observing everybody at the scene.

On redirect examination, the Respondent testified that it is the responsibility of an officer transporting prisoners to look around for possible threats to safety and security. She stated that although it cannot be seen on the videotape, there is heavy pedestrian and vehicular traffic on the block of the Central Booking entrance. She explained that because an officer can be attacked from any direction, she has learned through training and experience to look all around instead of focusing on one specific prisoner. She reiterated that only since [REDACTED]'s escape has the Department started issuing Prisoner Movement Slips to officers assigned to prisoner transport. A couple of days after [REDACTED]'s escape, the Respondent acknowledged that the Department also installed gates near the Central Booking entrance. The gates, as the Respondent testified, are commonly called "the Bobe gate," prevent pedestrians from passing through the area as prisoners are being brought into Central Booking, thereby providing better security. The Respondent testified that [REDACTED] was not wearing anything out of the ordinary at the time of his escape. She stated that even if she had noticed the escape, she had 12 other prisoners in her custody at the time.

The Respondent testified that the Patrol Guide does not address every conceivable situation that a police officer may encounter as he is performing his duties. For example, it does not address whether or not an officer assigned to safeguard a hospitalized prisoner can take a "personal" or time for personal matters. Many situations call on an officer to

use common sense. While the Patrol Guide dictates that hospitalized prisoners should be handcuffed, it also states that there are certain situations in which handcuffing may not be necessary.

The Respondent reiterated that she inspected the hospital room upon her arrival at post on June 6, 2006. She explained that she did not document her inspection of the room in her Activity Log and instead documented her prisoner's condition because the prisoner was more of a concern for her. According to the Respondent, Brown did not talk to her that day about neglecting to document the room inspection. She became aware of the allegation for the first time when she received charges. The Respondent testified that at no point did she curse at Brown.

FINDINGS AND ANALYSIS

Disciplinary Case No. 82317/06

Specification Nos. 1 & 2

The Respondent stands charged with being off post on June 6, 2006. The Respondent was assigned to safeguard a hospitalized prisoner that day, and Martinez was assigned to safeguard another prisoner in a room located ten to 15 feet from the Respondent's post. Brown testified that when he arrived at the hospital to check in on the Respondent and Martinez, he found the two officers engaged in conversation on chairs outside of Martinez's prisoner's room. The Respondent, in contrast, testified that the chair she was sitting in was located in the hallway directly outside of her own prisoner's room. According to the Respondent, her chair faced into her prisoner's room, and she was able to maintain a visual of her prisoner.

The Court finds that for several reasons the preponderance of the credible evidence supports Brown's version of the incident. First, Brown's version was corroborated by Martinez's testimony. Martinez testified that at various times throughout the course of the day he and the Respondent talked to each other in the hallway. He stated that while he would stay by his prisoner's room, the Respondent would come to his location to converse. Thus, according to Martinez, the Respondent was approximately ten or 15 feet away from her post at times. Neither the Department nor the Respondent presented any cause to question Martinez's impartiality.

Second, Brown's version of the incident was consistent with the statements the Respondent made in her June 14, 2006 Official Department Interview. As was brought out on cross examination, during that interview, the Respondent stated that she sat with her back toward the prisoner and did not maintain a constant visual on the prisoner. She also stated in the interview that Brown instructed her to move her chair "back in front of the room." This instruction from Brown suggests that the Respondent had been sitting in the wrong location.

Third, in contrast to Brown, all that the Respondent could provide in support of her version of the incident was her convenient, self-serving claim that she spoke to Martinez without ever leaving her post. In the absence of any verification, there is doubt cast on the accuracy of the Respondent's testimony. This is true not only of her testimony concerning this Specification but also of her testimony concerning the rest of the allegations against her.

e Respondent also stands charged with neglecting to handcuff her prisoner.

; to the Respondent, she could not place handcuffs on the prisoner's left hand

because he had a cast on his left arm from his shoulder to his fingertips. She testified that she removed the handcuffs from the prisoner's right hand so that he could eat. The Respondent claimed that Brown arrived at the hospital as the prisoner was eating breakfast or drinking juice.

Brown and the Respondent agreed that restraint is not required in situations where medical treatment precludes it. They also agreed that it is all right to remove one hand from a handcuff in order to allow a prisoner to eat. In contrast to the Respondent's testimony, however, Brown testified that the Respondent's prisoner's left arm had bandage from the forearm to the elbow, but there was nothing on the wrist area. He further testified that he did not recall seeing any milk or food near the prisoner, and the prisoner was not eating at the time. Brown concluded that there was no reason for the prisoner not to be handcuffed.

Because (as discussed above) the Court considers the Respondent's self-serving testimony to be of questionable accuracy, the weight of the credible evidence falls in favor of the Department's case. Thus, the Respondent is found Guilty of Specification Nos. 1 and 2.

Specification No. 3

The Respondent stands charged with being discourteous to Brown, in that Brown observed and heard her speaking in a loud voice to Martinez where she stated in sum and substance, "That motherfucker, he already has a problem with me, why is he bothering me, he's the one that got me suspended" referring to Brown.

Brown credibly testified that when he inspected the hospital posts of the Respondent and Martinez he found that the Respondent was away from the room where she was assigned to safeguard a prisoner. Both Martinez and the Respondent were sitting in chairs outside the room assigned to Martinez. When Brown and the Respondent entered the hospital room, Brown also found that the Respondent's prisoner was not properly handcuffed. When he asked her why was the prisoner not handcuffed she pointed out that his leg was shackled. When he asked her again to explain why he was not handcuffed she told him "I said he has leg shackles on." When Brown ordered the Respondent to handcuff the prisoner the Respondent responded by saying "why are you bothering me?" No one else ever asked me about this. It's just you."

At one point they both exited the room and as Brown was preparing to document in his Activity Log his visit to the Respondent's post, he observed the Respondent speaking with Martinez approximately ten feet from room 632. According to Brown, he believed he heard the Respondent refer to him as a "motherfucker." Brown testified that when he asked the Respondent if she was calling him a motherfucker, the Respondent replied that he was bothering her and that she already had a problem with him as he was the one who got her suspended. Brown recorded the following in his memo book relevant to these allegations:

Officer referred to this supervisor as a "motherfucker" and then stated,
'Listen, I already have a problem with you anyway. Now you are
bothering me. I gonna (sic) make a complaint. You got me suspended.'
Police Officer Martinez witness to above accounts. (DX 1)

Martinez testified that he heard the Respondent and Brown arguing in the hallway, but could not hear what they were saying. According to Martinez, after Brown

left Martinez asked the Respondent what happened and she told him that Brown accused her of calling him a “black motherfucker.” Martinez stated that he never heard the Respondent call Brown a motherfucker.

The Respondent, during her testimony, admitted that she had a loud dispute with Brown while in the hospital room and that when he told her to move her chair across the hall she told Brown out in the hallway, “I don’t know why you keep picking on me. You are the reason I got suspended, and I want to be left alone.” The Respondent conceded that she was upset with Brown, but she denied ever calling him a motherfucker.

This Court finds that the evidence falls short of supporting the allegation that the Respondent called Brown a “motherfucker.” The evidence, however, does support the allegations that the Respondent was discourteous towards Brown. Whether this Court credits Brown’s version or the Respondent’s version the sum and substance of both of these versions corresponds to the “sum and substance” statements (excluding “mother fucker”) that are alleged in Specification No. 3. The only difference between the wording of the specification and the evidence presented at trial is that the specification alleges that the Respondent was “observed and heard [by Brown] speaking with another UMOS,” Martinez, and the trial testimony has the Respondent making the statements directly to Brown. This Court, however, is mindful that the Respondent is charged with discourtesy towards Brown and therefore the relevant wording of the specification is that portion where the Respondent is charged with being “discourteous to New York City Police Department Sergeant Andrew Brown.” Whichever version this Court chooses to credit the conclusion is the same: the Respondent was discourteous to Sergeant Brown.

Accordingly, the Respondent is found Guilty of Specification No. 3.

Specification No. 4

The Respondent stands charged with failing to document in her Activity Log if she conducted a security inspection of a hospitalized prisoner. There was extensive testimony at trial on exactly what the Respondent should have documented in her Activity Log upon arriving at post on June 6, 2006. Whether or not the Respondent should have memorialized in the log her inspection of the hospital room, however, is irrelevant since this Specification, as it was drafted, does not deal with that issue. The Specification deals specifically with the Respondent's inspection of the prisoner. Because the Respondent clearly indicated in her Activity Log the prisoner's condition (that his legs were shackled), this Court finds her Not Guilty of Specification No. 4.

Specification No. 5

The Respondent stands charged with being off post on June 8, 2006. The Respondent was again assigned to safeguard a hospitalized prisoner that day, and Bess was assigned to safeguard another prisoner in a room located down the hall. Fleming testified that when she arrived at the hospital to check in on the Respondent and Bess, she found the two officers engaged in conversation in Bess's prisoner's room. When Fleming asked the Respondent why she was not on post, the Respondent told her that she needed to take a "personal" in order to use the bathroom. Although there was a bathroom on her post, the Respondent indicated to Fleming that she used another bathroom located down the hall. The Respondent explained at trial that because the bed was blocking the door of the bathroom located inside her prisoner's room, she used the hospital employee bathroom, which was located in the hallway three or four doors down from her post.

According to the Respondent, she asked Bess to check in on her prisoner while she was in the bathroom.

As with the previous charge of being off post, the Respondent's claim that she was just returning from the bathroom when Fleming saw her was uncorroborated and self-serving. Even if the claim is accepted as true, however, the Respondent would still be Guilty of being off post without justification. According to Fleming, the Respondent should have called the desk for relief before going to the bathroom. If the Respondent did not think she could wait for relief, the very least she could have done was have the bed moved away from the bathroom door inside her prisoner's room. This would have made it possible for her to use the bathroom without leaving post. Although there may still have been a lapse in her visual contact with the prisoner while in the bathroom, she would have been much closer to the prisoner and would have been able to maintain audio contact with him. The Department's witnesses agreed with the Respondent's contention that the Patrol Guide leaves room for members of the service to handle specific situations using common sense. It would have made sense in this case for the Respondent to stay as near to her prisoner as possible.

As for the Respondent's claim that she asked Bess to cover her prisoner while she was in the bathroom, there would have been no way for Bess to be on her own post guarding her own prisoner during the period that she was covering the Respondent's prisoner. Moreover, the Respondent even conceded that because Bess had her own prisoner to safeguard in another room ten to 15 feet away, there were times that her prisoner was alone unattended. In other words, although the Respondent may have believed she was being responsible by having Bess cover for her, she was in effect

leaving two prisoners (both her own prisoner and Bess' prisoner) without guarding. This is one more way in which the Respondent's actions defied common sense.

Accordingly, the Respondent is found Guilty of Specification No. 5.

Disciplinary Case No. 81941/06

The Respondent stands charged with failing to safeguard a prisoner, resulting in the loss of the prisoner. The Respondent was assigned to transport prisoners from the 48 Precinct station house to Central Booking. Upon arriving at Central Booking, her partner, Ingoglio, led a chain of prisoners into the building. The Respondent was standing behind the prisoners when one of the prisoners, [REDACTED], walked away. The Respondent claimed in her defense that she did not know [REDACTED] was a prisoner because she was not involved in placing the prisoners on the daisy chain, did not place the prisoners in the van, and did not have Prisoner Movement Slips. She also claimed that there is heavy pedestrian and vehicular traffic on the block of the Central Booking entrance, people are always walking in the area of the doorway, it is hard to keep track of who is coming and who is going, and she had to look around to ensure that nobody suspicious approached her from behind.

The Court finds the Respondent's excuses for [REDACTED] escape unacceptable. It should be noted that since [REDACTED]'s escape, the Department has started issuing Prisoner Movement Slips to officers assigned to prisoner transport. In addition, as the Respondent testified the new "Bobe gate" has been installed to prevent pedestrians from passing through the area of the Central Booking doorway as prisoners are being brought into the building. These subsequent modifications do not, however, change the fundamental fact

that on May 7, 2006, the Respondent was responsible for safeguarding [REDACTED] (along with the rest of the prisoners in the transport) until they were secured in Central Booking.

The Respondent should have had no problem identifying [REDACTED] as a prisoner since [REDACTED] came out of the prisoner van, and the Respondent was supposed to be closely observing the prisoners as they walked from the van to Central Booking.

Although this would be true no matter how much traffic was passing by, the video recording of the incident shows that, in fact, nobody passed by the immediate vicinity of the doorway as the prisoners were entering the building that day.

Klimoski testified that it was a series of errors that led to [REDACTED]'s escape. For example, [REDACTED]'s handcuffs were not securely locked, and the patrol supervisor for that day received a Command Disciple for neglecting to physically inspect the handcuffs of each prisoner on the daisy chain. Although other members of the service involved in the incident also received Command Disciplines for their errors, the Respondent was the only member of the service to be suspended. Klimoski explained that this was because the Respondent's error was the most serious. The Court agrees with Klimoski's assessment since the Respondent was solely responsible for safeguarding the prisoners as they walked from the prisoner van to the building, and it was during this period that [REDACTED] actually escaped. Once the prisoners were in her custody, the Respondent became responsible for them. It is only natural, therefore, that she would be held accountable when one of the prisoners escapes.

Accordingly, the Respondent is found Guilty as charged.

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222 (1974).

The Respondent was appointed to the Department on March 1, 2000. Information from her personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

The Respondent has been found Guilty of being discourteous to a supervisor, Sergeant Brown. This Specification is reminiscent of Disciplinary Case No. 71857/97, in which a 13-year member with no prior disciplinary record forfeited ten vacation days for loudly complaining about her supervisors and referring to them disparagingly.

The Respondent has also been found Guilty of failing to handcuff a hospitalized prisoner; being off-post on two occasions while assigned to safeguard a hospitalized prisoner; and failing to safeguard a prisoner during transport to Central Booking, resulting in the loss of said prisoner. Given the number and nature of these offenses, the Respondent has exhibited a shocking disregard for what is arguably the most fundamental of police functions: proper prisoner security. In Disciplinary Case No. 63900/89, a three-year member with no prior disciplinary record forfeited ten vacation days for leaving a hospitalized prisoner uncuffed, and in Disciplinary Case No. 78634/03, a three-year member with no prior disciplinary record forfeited 15 vacation days for leaving a hospitalized prisoner unattended. In Disciplinary Case Nos. 80818/05 & 80820/05, two three-year members with no prior disciplinary record forfeited eight vacation days each for failing to safeguard a prisoner, resulting in the loss of the prisoner from Central Booking.

Based on all of the foregoing, it is recommended that the Respondent forfeit 30 vacation days in addition to the 22 pre-trial suspension days she has already served for a total forfeiture of 52 days.

APPROVED
DEC 01 2008
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,
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John Grappone
Assistant Deputy Commissioner – Trials